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Federal Communications Commission

DA 97-1565

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Bear Creek and Pocono Pines,
Pennsylvania)¹

MM Docket No. 96-151
RM-8808
RM-8891

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 16, 1997;

Released: July 25, 1997

By the Chief, Allocations Branch:

1. At the request of Victor A. Michael, Jr. ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 11 FCC Rcd 8566 (1996), proposing the allotment of Channel 290A at Bear Creek, Pennsylvania, as the community's first local aural transmission service (RM-8808). Petitioner filed comments in support of the proposal reaffirming his intention to apply for the channel, if allotted. Late-filed comments were also received by Covenant Broadcasting expressing its interest in the channel. A counterproposal was filed by Keymarket of NEPA, Inc. ("Keymarket") proposing the allotment of Channel 290A at Pocono Pines, Pennsylvania, as the community's first local aural transmission service (RM-8891).² Petitioner filed reply comments.

2. In the Notice, petitioner was requested to submit sufficient information to demonstrate that Bear Creek is incorporated or has the economic, cultural, or governmental indicia to qualify as a "community" for allotment purposes. Alternatively, if petitioner wished the allotment to be made to Bear Creek Township, petitioner was requested to provide specific boundaries in order to confirm that a Class A channel could provide the entire township with a city-grade 70 dBu signal.³ In response, petitioner states that Bear Creek is a small, organized community located

¹The community of Pocono Pines, Pennsylvania, has been added to the caption.

²The counterproposal was placed on Public Notice on October 8, 1996, Report No. 2158 (RM-8891).

³Petitioner did not specifically address this issue in his comments. However, our engineering analysis has revealed that from the proposed site, a city-grade 70 dBu signal would cover the entire township.

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in the heart of the "Pocono Northeast" section of Pennsylvania. This area is a large vacation/resort for people in surrounding metropolitan areas. While Bear Creek is not incorporated, it is centrally located in the largely populated area of the Poconos. Depending on the ultimate transmitter site, petitioner further states that the new station will serve in excess of 50,000 persons within its 1.0 mV/m contour. Petitioner states that in the event Bear Creek is ultimately found not to be a "community" for allotment purposes, he will accept the allotment to Bear Creek Township which is essentially the same as Bear Creek. In his reply comments, petitioner reiterates his preference for a Class A allotment at Bear Creek or Bear Creek Township.

3. In its counterproposal, Keymarket proposes the allotment of Channel 290A at Pocono Pines, Pennsylvania, in lieu of Bear Creek, Pennsylvania. In support of its counterproposal, Keymarket states that Pocono Pines is a "Census Designated Place" listed in the 1990 U.S. Census with a population of 824 persons and has a post office. Keymarket further states that it is well-established that "community" status is generally satisfied if a place is listed in the U.S. Census as a "Census Designated Place," citing Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982) at 101, recon. denied, 56 RR 2d 448 (1984); Greenwood, South Carolina, et al., 2 FCC Rcd 3583 (1987); and Essex, New York, 4 FCC Rcd 5775 (1989).

4. In contrast, Keymarket argues that Bear Creek (to be distinguished from "Bear Creek Township") is not listed in the 1990 U.S. Census but is only listed in the 1995 Rand McNally Commercial Atlas with a population of 260 persons. Furthermore, Keymarket contends that even assuming, arguendo, that "community" status of Bear Creek is established, it is clear that the population of Pocono Pines is over three times larger. Therefore, petitioner argues that the Pocono Pines allotment should be preferred based on that factor alone, citing e.g., Bostwick and Good Hope, Georgia, 6 FCC Rcd 5796 (1991); Three Oaks and Bridgman, Michigan, 5 FCC Rcd 1004 (1990); and Clarksville and Lanesville, Indiana, 4 FCC Rcd 4968 (1989). Keymarket further contends that these cases demonstrate that the larger populated community is generally considered to be the most important indication for a greater need for a local service. Keymarket urges that petitioner's proposal be denied because Bear Creek is not a "community" for allotment purposes,⁴ and even if Bear Creek was ultimately found to be a "community," Pocono Pines has a significantly larger population (824 vs. 260 persons). Therefore, petitioner concludes that Channel 290A should be allotted to Pocono Pines as its first local aural transmission service.

⁴Citing Vimville, Mississippi, 48 FR 5974 (1983); and Hannibal, Ohio, 6 FCC Rcd 2144 (1991)

5. After careful examination of the proposals, we find that petitioner has not sufficiently demonstrated that Bear Creek qualifies as a "community" for allotment purposes.⁵ Where a locality is asserted to be a "community" and, as here, it is not incorporated or listed in the U.S. Census, proponent must show that it is a "geographically identifiable population grouping." While the proponent of the allotment need not show that the borders of the municipality are precisely ascertainable, the proponent must show that residents of the locality are commonly regarded as a distinct group. This can be proven by the "testimony of local residents or by objective indications of the existence of a common perception that a locality's populace constitutes a distinct 'geographical population grouping'." See e.g., Beacon Broadcasting, 2 FCC Rcd 3469 (1987), aff'd 2 FCC Rcd 7562 (1987); see also Kenansville, Florida, 5 FCC Rcd 2663 (1990), rev. denied, 10 FCC Rcd 9831 (1995). Examples of objective indications of "community" status include the existence of political, commercial, social and religious organizations and services in the community. Petitioner has not provided evidence that establishes "community" status for Bear Creek under the Beacon or Kenansville tests. Specifically, after being requested to do so, petitioner failed to provide information to show that businesses are located in Bear Creek for the purpose of serving the common needs of the citizens, and failed to provide the names of political, commercial, social, or religious organizations, which could have connected their purpose with Bear Creek residents. See Coker, Alabama, 43 RR 2d 190 (1978). Therefore, based on the information before us, we find that Bear Creek is not a "community" for allotment purposes because it lacks the requisite economic, cultural, or governmental indicia for "community" status.

6. On the other hand, we do find that Pocono Pines is a "community" for allotment purposes because it is listed in the 1990 U.S. Census as a "Census Designated Place" attributed with a population 824 persons. Conflicting proposals are comparatively considered under the guidelines set forth in Revision of FM Assignment Policies and Procedures, *supra*.⁶ However, since neither Bear Creek nor Bear Creek Township is found to be a "community" for allotment purposes, a comparison of the two proposals is no longer necessary. Therefore, we believe the public interest would be served by allotting Channel 290A at Pocono Pines, Pennsylvania, as the community's first local aural transmission service.

Technical Summary

⁵Although petitioner expressed his preference for the allotment of Channel 290A at Bear Creek Township, in the event Bear Creek was found not to be a "community" for allotment purposes, the Commission generally allots channels to communities, and not to townships. Therefore, we find no justification for considering allotting Channel 290A at Bear Creek Township. See Trade, Tennessee 6 FCC Rcd 5835 (1991); and Brownstown, Indiana, et al., 7 FCC Rcd 3173 (1992). Moreover, petitioner indicates he will apply for Channel 290A, if ultimately allotted to Pocono Pines, Pennsylvania.

⁶The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)]

7. An engineering analysis has determined that Channel 290A can be allotted to Pocono Pines in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.1 kilometers (8.2 miles) northwest to avoid short-spacings to the licensed and construction permit sites of Station WNWK(FM), Channel 290B1, Newark, New Jersey.⁷ Since Pocono Pines is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained.

8. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 8, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Pocono Pines, Pennsylvania	290A

9. The window period for filing applications for Channel 290A at Pocono Pines, Pennsylvania, will open on September 8, 1997, and close on October 9, 1997.

10. IT IS FURTHER ORDERED, That the petition for rule making filed by Victor A. Michael, Jr., to allot Channel 290A at Bear Creek, Pennsylvania (RM-8808), IS DENIED.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

⁷The coordinates for Channel 290A at Pocono Pines are North Latitude 41-09-17 and West Longitude 75-35-52.